

Application of : Judah Z. Weinberger  
Serial No. : 09/803,773  
Date Filed : March 12, 2001  
Page 8

D. Remarks

Reconsideration and allowance of the present application in view of the accompanying remarks are respectfully requested.

Claims 1-4, 6-13 and 22-29 were pending in this application. and of those claims 1, 8, 22, 25 and 28 are independent. Of those claims, claims 25 and 28 are allowed.

In the Office Action, the Examiner rejected claims 1-3, 7-10 and 22 as being allegedly anticipated by Hess ('466). The Examiner stated that Hess teaches an apparatus for resenosis treatment of an artery. The Examiner stated that the apparatus includes a balloon catheter 72 having an inflatable balloon and a cylindrical, elastic radioactive tube 74. The Examiner stated that the tube is longitudinally slidable over the balloon catheter at least when the tube is placed on the delivery balloon and once the tube is placed at a target site in the body. The Examiner stated that the cylindrical radioactive tube covers the balloon substantially entirely during inflation such that the outer surface of the tube is exposed for direct contact with the luminal structure. The Examiner stated that the tube can include a radioactive dose coating or be formed of a mixture of radioactive material additive within nonradioactive stent material (col. 4, lines 41-45). The Examiner stated that the tube can be an expandable and collapsible material such that the tube may be removable (col. 4, lines 37-39). The Examiner stated that the tube is expandable in a range of sizes. The Examiner stated that, in operation, the balloon catheter is inserted into the body lumen with the radioactive tube having been longitudinally slid over the balloon catheter such that the tube

Application of :     Judah Z. Weinberger  
Serial No.       :     09/803,773  
Date Filed      :     March 12, 2001  
Page 9

is disposed over the balloon; the balloon is inflated with fluid to expand the tube segment and administer a radiation dose to the luminal structure; the balloon is deflated and the tube segment collapsed; and the balloon catheter and tube are removed from the luminal structure.

The Examiner rejected claims 4 and 11 as being allegedly obvious over Hess ('466) in view of Lewis et al. (552). The Examiner stated that Hess teaches all of the limitations of the claims except that the tube includes a non-radioactive material into which is absorbed radioactive material. The Examiner stated that Lewis et al. teach that it is known in the art to make intraluminal radiation devices of a non-radioactive material into which is absorbed radioactive material. The Examiner stated that it would have been an obvious engineering design choice to one skilled in the art at the time the invention was made to make a radioactive tube similar that of Hess by absorbing radioactive material into a non-radioactive material in view of the teachings of Lewis et al. in order to produce a tube that is capable of providing a radioactive dose.

The Examiner rejected claims 6, 23 and 24 as being allegedly obvious over Hess ('466) in view of Fischell et al. ('282). The Examiner stated that Hess teaches all of the limitations of the claims except that the balloon is inflated with a gas. The Examiner stated that catheter includes a balloon **14** with an expandable, elastic radioactive tube segment **16** adhesively attached to the balloon **14** by an outer balloon **15** which is heat sealed (shrunk) to the inner balloon (col. 5, lines 2-6). The Examiner stated that balloon **14** with a carbon dioxide gas to bring the tube segment into proximity to a luminal structure

Application of : Judah Z. Weinberger  
Serial No. : 09/803,773  
Date Filed : March 12, 2001  
Page 10

(col. 6, 51-53). The Examiner stated that it would have been obvious to one having ordinary skill in the art that since the radioactive source 16 is expandable and elastic, the dosage per surface area of the source would inherently be different in an inflated state than that of the unexpanded state. The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use a carbon dioxide gas as an inflation medium in view of the teachings of Fischell et al. in order to inflate the balloon catheter of a device similar to that of Hess as an obvious engineering design choice, merely substituting one known inflation medium for another that is capable of performing the same function.

In regard to the rejection of independent claims 1, 8 and 22, the Examiner states that Hess '466 discloses that the stent is collapsible, citing col. 4, lines 37-38 which merely says "[s]tent 74 may be removable or may be a permanent implant."

However, although the stent in Hess '466 may be removable, this doesn't necessarily mean that it is collapsible. There may be other acceptable means of removing the stent. Applicant thus believes that Hess fails to disclose, specifically or inherently, the feature that the stent is collapsible in order to remove it. Accordingly, claims 1, 8 and 22 are believed to be patentable over Hess.

Without conceding the correctness of the Examiner's position, but solely to advance prosecution claims 1 and 8 are being amended to recite that the tube segment is expanded and deflated with the balloon being expanded and deflated. Claim 22 is being amended

Application of : Judah Z. Weinberger  
Serial No. : 09/803,773  
Date Filed : March 12, 2001  
Page 11

to recite that the tube segment is collapsed together with the balloon being deflated. Applicant believes that these claims now clearly distinguish over the Hess reference which does not directly or inherently disclose these features. Even if the stent in Hess is collapsible, nothing in Hess discloses that the stent is made of an expandable and collapsible material so that the stent would necessarily collapse when the balloon was deflated.

The other rejected claims are dependent either directly or indirectly on independent claims 1, 8 or 22, and are patentable for at least the same reasons that the independent claims are patentable. The prior art of Lewis ('552) or Fischell et al. ('282) fails to remedy the deficiencies of Hess ('466) stated above.

In view of the foregoing, applicants respectfully request withdrawal of the rejections of the pending claims and request allowance.

If a telephone interview would be of assistance in advancing prosecution of the subject application, the undersigned attorney invites the Examiner to telephone him at the telephone number provided below.

No fee is deemed necessary in connection with the filing of this Amendment. If any fee is required, authorization is hereby given

Application of : Judah Z. Weinberger  
Serial No. : 09/803,773  
Date Filed : March 12, 2001  
Page 12

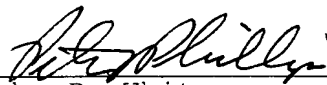
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Respectfully submitted,

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